

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-104388-08

Date:

July 08, 2008

Re:

Legend:

Decedent =

Date 1 =

Date 2 =

Date 3 =

Year =

Trust =

Trustee =

Dear :

This is in response to a letter dated January 24, 2008, from your authorized representative, requesting an extension of time under § ' 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to allocate Decedent's available generation-skipping transfer (GST) tax exemption to a trust.

Facts

Decedent established a charitable lead unitrust, Trust, on Date 1. Article I, Paragraph A of Trust directs the Trustee to pay annually a specified percentage of the fair market value of the Trust assets, determined annually, to certain charitable organizations. Trust is to terminate in Year, and upon termination, the remainder is to be paid to the Decedent's two grandchildren. On Date 2, Decedent transferred cash and stocks to Trust.

Decedent retained the services of a certified public accountant to prepare her federal tax returns. Trustee notified the Decedent's accountant of the creation of Trust and the need to prepare and file a Form 709, United States Gift (and Generation-

Skipping Transfer) Tax Return, to report the taxable gift and allocate the appropriate amount of Decedent's GST exemption to the transfer.

Decedent died on Date 3. While preparing Decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, the Executors of Decedent's estate discovered that the accountant had not prepared a Form 709 for Decedent reporting the transfer to Trust.

Decedent's estate is requesting an extension of time to make an allocation of Decedent's GST exemption with respect to the transfer to Trust. At the time of Decedent's death, all of her GST exemption was available. To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to Trust that would give rise to a GST tax liability with respect to Trust or any of its beneficiaries.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer (within the meaning of subchapter B). A "generation-skipping transfer" is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate.

Section 2641(a) defines the term "applicable rate" with respect to any GST as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a)(1) provides that, generally, the inclusion ratio with respect to any property transferred in a GST is the excess of 1 over the "applicable fraction." With respect to a GST that is not a direct skip, § 2642(a)(2) provides that, in general, the applicable fraction is a fraction the numerator of which is the amount of the GST exemption under § 2631 allocated to the trust and the denominator of which is the value of the property transferred to the trust.

Section 2631(a), as in effect for decedents dying and generation-skipping transfers before January 1, 2004, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1), the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-2(b) provides that an automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and the taxpayer takes corrective action as defined in § 301.9100-2(c) within that 6-month extension period.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and representations made, we conclude that the requirements of § 301.9100-3 are satisfied. Therefore, the Executors of Decedent's Estate are granted an extension of time of 60 days from the date of this letter to allocate Decedent's available GST exemption to the transfer to Trust on Date 2. The allocation will be effective as of the date of the transfer to Trust, and will be based on the value of the assets on Date 2, the date Decedent contributed the assets to Trust.

The allocation of Decedent's GST exemption should be made on a supplemental Form 709 and filed with the Internal Revenue Service Center in Cincinnati. A copy of this letter should be forwarded to the Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999, for association with the Form 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosure

Copy for section 6110 purposes
Copy of this letter